IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5537 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GIRISHBHAI SHIVPRASAD KAHAR

Versus

STATE OF GUJARAT

Appearance:

M/S THAKKAR ASSOC. for Petitioner

RULE SERVED for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 06/10/2000

ORAL JUDGEMENT

1. The petitioner who is detained by an order dated 25th May 2000 by the Commissioner of Police, Baroda City, under section 3(2) of the Gujarat Prevention of Anti-Social Activities Act,1985 (hereinafter referred to as "PASA Act") has challenged the said order of detention

under Article 226 of the Constitution of India.

2. In the grounds of detention supplied to the petitioner, the detaining authority has relied upon four prohibition cases filed against the petitioner; two being pending trial and two under investigation. Besides these prohibition cases, the detaining authority has also relied upon the statements of three witnesses whose identity has not been disclosed, claiming privilege under section 9(2) of the PASA Act with respect to the incidents alleged to have taken place on 25.4.2000, 2.5.2000 and 8.5.2000 wherein the petitioner created an atmosphere of terror resulting into disturbing the entire tempo of life.

3. This petition is required to be allowed on the first point canvassed by Mr.Thakkar, learned Counsel appearing for the petitioner. It was contended that the detaining authority has not made any inquiry and has not done any exercise to point out the genuineness and correctness of the contents of the statements given by the witnesses and has mechanically exercised powers under section 9(2) of the PASA Act, without proper verification and, therefore, the order of detention is vitiated. The statements of witnesses recorded on 20.5.2000 by the sponsoring authority have been examined by the detaining authority on 24.5.2000. From mere perusal of the same, it is clear that the detaining authority has not verified the genuineness of the same. Therefore, the subjective satisfaction of the detaining authority without verification of such statements results into vitiating the order of detention.

4. The case of Jakirbhai Rahimbhai Nagori Vs. District Magistrate, Mehsana and ors., 1996(1) GLH 300 was a case where the Superintendent of Police who examined the statements at the instance of the detaining authority wrote below every statement one word "Verified". This Court, in view of the said fact, held that the claim of privilege made by the detaining authority on the basis of such endorsement was not genuine and, therefore, the continued detention of the detenu was illegal. In the instant case, even the word "Verified" is also missing and, therefore, it is still worst. It is now well established that for exercise of powers under section 9(2) of the PASA Act, what is required for the detaining authority is that he must come to a subjective satisfaction himself and for that purpose,he must be able to point out either in the grounds of detention or in the contemporaneous record that he had sufficient material before him to come to

that subjective satisfaction.

5. As stated above, in the instant case, below the statements of witnesses, the detaining authority has mentioned only " Rubaru " (in presence). There is no other material for arriving at the subjective satisfaction. Therefore, in my opinion, the continued detention of the detenu is illegal and vitiated.

6. In the result, this petition is allowed. The impugned order of detention dated 25.5.2000 is quashed and set aside. The petitioner- detenu is ordered to be released forthwith if not required in any other case. Rule made absolute.

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